Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1975

No. 75-915

VERNON LEE BOUNDS, etc., et al.,
Petitioners

v.

ROBERT (BOBBY) SMITH, et al.,
Respondents

R. L. TURNER, etc.,
Petitioner

v.

DONALD W. MORGAN, et al.,
Respondents

JAMES HOLSHOUSER, etc., et al.,
Petitioners

v.

JOHN HARRINGTON, et al.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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IN THE

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VERNON LEE BOUNDS, etc., et al.,
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on September 30, 1975.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fourth Circuit entered September 30, 1975 is not yet reported and is printed as Appendix A to this Petition. (A pp 14-21).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

WHETHER THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION REQUIRE THE NORTH CAROLINA DEPARTMENT OF CORRECTION TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the Constitution of the United States.

STATEMENT OF THE CASE

These three consolidated cases arose out of like claims asserted by various inmates of the North Carolina Department of Correction to the effect that, by failing to provide them with adequate legal library facilities, the State of North Carolina was denying to them reasonable access to the courts and equal protection of the laws as guaranteed by the First and Fourteenth Amendments. The United States District Court for the Eastern District of North Carolina, Raleigh Division, granted Plaintiffs' Motion for Summary Judgment and required the State of North Carolina to submit a proposed plan to provide adequate library facilities for the indigent prisoners seeking to file pro se habeas or civil rights actions. The State, obedient to the Order, filed a plan for prison legal research facilities. At this point the inmates objected to the omission from the plan of independent legal counsel for the prisoners as a supplement to the library facilities proposed under the plan. The Court ordered counsel for all parties to submit briefs on the issue of whether an independent attorney's office, supplementary to the library facilities was necessary. After consideration, the Court refused to require the State to establish an independent attorney's office and approved, with modification, the library facility plan submitted by the State obedient to the Order of the Court.

Both the State and the inmates appealed, the State from the Order for Summary Judgment contending that it is without obligation to provide prisoners with legal research facilities or an alternative therefor, and the inmates from the Order approving, with modification, the proposed plan, because they urged such plan was inadequate. The Court of Appeals for the Fourth Circuit, with minor modification, affirmed the action of the District Court in requiring the State to furnish legal research facilities to inmates (A pp 14-21).

REASONS FOR GRANTING THE WRIT

THE NORTH CAROLINA DEPARTMENT OF CORRECTION[1] IS NOT CONSTITUTIONALLY OBLIGATED TO PROVIDE INMATES WITH LEGAL RESEARCH FACILITIES.

1. The Division of Prisons of the North Carolina Department of Correction has custody of approximately 12,500 prisoners. These prisoners are housed in some 77 prison units situated in 67 different counties, stretching from the Currituck Subsidiary in the east to the Haywood Subsidiary in the west, a distance of 475 miles. Fifteen of these units house less than 100 prisoners, 50 from 100 to 200 prisoners, and 10 house over 200 prisoners. The reason for this diffusion of facilities and wide distribution of the prison population is the desire of the State to facilitate work release and other rehabilitative programs and, whenever feasible, to keep the prisoners near their families and within home counties, calculated to aid in their subsequent successful re-entry into society.

The District Court and the Court of Appeals relied upon GILMORE v. LYNCH, 319 F. Supp. 105 (N.D. Cal. 1970), *aff'd sub nom.* YOUNGER v. GILMORE, 404 U. S. 15 (1971). However, this Honorable Court's *per curiam* affirmance of GILMORE v. LYNCH, supra, added little clarity to the law. This Court's citation to another *per curiam*, ALABAMA TEACHERS v. ALABAMA PUBLIC SCHOOLS AND COLLEGE AUTHORITY, 393 U. S. 400 (1969) seems to establish that direct appeal from a three judge district court to this Court is proper when the complaint seeks an injunction against a regulation of state-wide applicability. On the merits, the case of JOHNSON v. AVERY, 393 U. S. 483 (1969), cited in YOUNGER v. GILMORE, supra, established that a state cannot bar mutual legal assistance among inmates unless other reasonably adequate alternative means are made available. However, JOHNSON is based upon a prison regulation prohibiting inmate legal assistance, i.e., that a regulation against "jailhouse lawyer" assistance would not be permitted to stand unless there is an alternative. Therefore, JOHNSON is not applicable because no such prohibition exists in the State of North Carolina. For the same reason, the holding of the Fifth Circuit Court of Appeals in NOVAK v. BETO, 453 F. 2d 661 (5th Cir. 1971) is also inapplicable. In NOVAK the Texas Department of Correction prohibited inmate legal assistance on behalf of other inmates, a situation not found in North Carolina. As a result of this prohibition, the Texas Department of Correction was required to provide legal assistance. It is submitted that the only conclusion which can be drawn from the YOUNGER *per curiam* is purely negative, that a state cannot by regulation restrict the contents of prison law libraries. It is further submitted that nowhere is the rule established requiring prison law libraries, particularly when a state, such as North Carolina, provides meaningful alternatives.

In 1972, in HOOKS v. WAINWRIGHT, 352 F. Supp. 163 (N.D. Fla. 1972), the Court considered the question:

> "Does the state have an affirmative federal constitutional duty to furnish prison inmates with expensive law libraries or to provide inmates with professional or quasi-professional legal assistance?"

Based on the Equal Protection Clause, the Court ruled that the state did have such an obligation and ordered plans presented to implement the ruling.

With deference to the HOOKS v. WAINWRIGHT Court and to the Court of Appeals for the Fourth Circuit, it is respectfully submitted that JOHNSON v. AVERY, supra, has been expanded beyond its intent. JOHNSON had to do with a regulation depriving inmates of the assistance of other inmates in preparing writs. It held that such a regulation, without reasonable alternatives, listing some, deprived prospective petitioners of access to the courts. It did not, and does not now, require establishment of expensive law libraries for prisoners. No doubt, courts receiving inartfully drawn petitions have yearned for the pen to be held by a legal scholar; perhaps that is one of the reasons responsible for the HOOKS decision.

For several reasons it is not sound to postulate that there is a need for establishing law libraries in prisons. This proposition does not realistically appraise their use by numbers, effect or subject; nor are they needed or constitutionally required.

Those of us who work with prisoner petitions know that they are written by only a very small number of inmates for a very small number of the prison population. Therefore, the number of inmates who would benefit, assuming for the moment that there might be some benefit, would be miniscule.

As to the question of benefit, it is submitted that those inmates who write petitions, building kingdoms for themselves within the prison walls, do not contribute wholesomely to the rehabilitative function of the institution. It is such inmates who create strife and detract from the success of rehabilitative programs.

In JOHNSON v. AVERY, supra, at page 488, this Court stated:

> "It is indisputable that prison 'writ writers' like petitioner are sometimes a menace to prison discipline. . . ."

The establishment of prison law libraries will not contribute to rehabilitation and will not inure to the benefit of anyone or the institution. Accepting this premise, the probable result of the establishment of prison law libraries will not result in a benefit to society.

Law is not a science, and highly educated, devoted judges and practicing attorneys sometimes find it difficult to read a statute, a legal treatise or an opinion and determine its precise meaning.

> "Jails and penitentiaries include among their inmates a high percentage of persons who are totally or functionally illiterate, whose educational attainments are slight, and whose intelligence is limited. . . ." JOHNSON v. AVERY, supra, at p. 487.

It is respectfully submitted that the tools of the trade of the legal profession, if furnished to prison inmates would be placed in the hands of individuals ill equipped to use them.

In ROSS v. MOFFITT, 417 U. S. 600 (1974), the question considered by this Court was the constitutional necessity for the appointment of counsel to seek discretionary review. Although set in a different context, the rational of MOFFITT is equally applicable to the question of whether or not a state is required by the Constitution to furnish law libraries to prisoners.

> "Despite the tendency of all rights 'to declare themselves absolute to their logical extreme', there are obviously limits beyond which the equal protection analysis may not be pressed without doing violence to the principles recognized in other decisions of this Court. The Fourteenth Amendment 'does not require absolute equality or precisely equal advantages'."

In MOFFITT, Justice Rehnquist quoted from DOUGLAS v. CALIFORNIA, 372 U. S. 353 (1963):

> ". . . But it is appropriate to observe that the state can, consistently with the Fourteenth Amendment, provide for differences so long as the result does not amount to a denial of due process or an 'invidious discrimination'. Absolute equality is not required; lines can be and are drawn and we often sustain them."

After recounting the necessity for counsel at the trial stage required by the Due Process Clause, Mr. Justice Rehnquist wrote:

> "By contrast, it is ordinarily the defendant, rather than the state who initiates the appellate process, seeking not to fend off the efforts of the state's prosecutor but rather to overturn a finding of guilt made by a judge or jury below. The defendant needs an attorney on appeal not as a shield to protect him against being 'hailed into court' by the state and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt. This difference is significant for while no one would agree that the state may simply dispense with the trial stage of proceedings without a criminal defendant's consent, it is clear that the state need not provide any appeal at all. The fact that an appeal has been provided does not automatically mean that a state then acts unfairly by refusing to provide counsel to indigent defendants at every stage of the way. Unfairness results only if indigents are singled out by the state and denied

> meaningful access to that system because of their poverty. . . ."

And finally, the Court wrote:

> "The fact that a particular service might be of benefit to an indigent defendant does not mean the service is constitutionally required. The duty of the state under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly. . . ."

It is respectfully submitted that if a state need not provide an appeal nor provide counsel for discretionary review, if the state is not required to equalize economic conditions and is not mandated to provide elective benefits, it is not required by the Constitution to furnish law libraries for prisoners.

To hold that a state is constitutionally mandated to guarantee access to the courts by furnishing law libraries to prisoners is not consistent with fact. Obviously, expertise is not required. In McCRAY v. BURRELL, 367 F. Supp. 1191, 1193-94 (D. Md. 1973), Chief Judge Northrop wrote:

> "A look at the annual report of the Director of the Administrative Office of the United States Courts for the fiscal year ending June 30, 1972 and the semi-annual report of the Director of the first half of fiscal 1973, lend statistical evidence to our conviction that there is little hope of relief from the swelling ranks of petitioning prisoners. At the appellate level, nearly 31% of the prisoner appeals filed nationwide were filed in the United States Court of Appeals for the Fourth Circuit for fiscal 1972. This percentage rose to 36.1% during the first half of 1973. More importantly, prisoner cases

> accounted for 38% of the cases filed with the Fourth Circuit in 1972, and 45.3% for the first part of 1973."

The North Carolina Department of Correction does not prohibit inmates from preparing writs for others. Therefore, it should not be required to establish law libraries with the collateral hazards of furnishing "adequate" law libraries, with "adequate" access, with "adequate" circulation, and with "adequate" replacement procedures.

Although none of the 77 units comprising the Division of Prisons of the North Carolina Department of Correction has a law library, N.C.G.S. 7A-450,[2] et. seq., *ENTITLEMENT*

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2. § 7A-451. *Scope of entitlement.* — (a) An indigent person is entitled to services of counsel in the following actions and proceedings:
   (1) Any case in which imprisonment or a fine of five hundred dollars ($500.00), or more, is likely to be adjudged;
   (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
   (3) A post-conviction proceeding under Chapter 15 of the General Statutes;
   (4) A hearing for revocation of probation, if confinement is likely to be adjudged as a result of the hearing;
   (5) A hearing in which extradition to another state is sought;
   (6) A proceeding for judicial hospitalization under Chapter 122, Article 7 (Judicial Hospitalization) or Article 11 (Mentally Ill Criminals), of the General Statutes and a proceeding for involuntary commitment to a treatment facility under Article 5A of Chapter 122 of the General Statutes;
   (7) A civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;
   (8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;
   (9) A hearing for revocation of parole at which the right of counsel is provided in accordance with the provisions of Chaper 148, Article 4, of the General Statutes;
   (10) A proceeding for sterilization under Chapter 35, Article 7 (Sterilization of Persons Mentally Ill and Mentally Retarded) of the General Statutes; and
   (11) A proceeding for the provision of protective services according to Chapter 108, Article 4, of the General Statutes.

   (b) In each of the actions and proceedings enumerated in subsection (a) of this section, entitlement to the services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process. Entitlement continues through any critical stage of the action or proceeding, including, if applicable:
   (1) An in-custody interrogation;
   (2) A pretrial identification procedure which occurs after formal charges

OF INDIGENT PERSONS GENERALLY, provides a meaningful alternative in the form of court-appointed counsel. In fiscal year 1971-72, the State of North Carolina spent a total of $1,962,719.59 for the appointment of counsel in 11,278 cases. The cost rose in 1972-73 when $2,454,018.00 was appropriated and $2,624,378.41 was actually spent for the appointment of counsel in 16,304 cases, an increase of 44.6%. The 1973 session of the General Assembly of North Carolina appropriated $3,230,000.00 for the 1973-74 fiscal year. For the fiscal year 1974-75, the General Assembly appropriated $3,750,597.00. For the current fiscal year 1975-76, the General Assembly has appropriated $5,596,769.00. In view of the foregoing, the State of North Carolina earnestly contends that this is a meaningful alternative to the establishment of prison law libraries.

In the State of North Carolina there is only one major law library supported with state funds (except for the law libraries maintained in state-supported law schools), i.e., the Library of the Supreme Court of North Carolina. Except for the Supreme Court library and a facility provided for the Judges of the North Carolina Court of Appeals, the State of North Carolina does not provide legal research facilities for the North Carolina judiciary. A Judge of the North Carolina District Court is provided only unbound Advance Sheets of the North Carolina Court of Appeals and the Supreme Court of North Carolina. Judges of the Superior Court are provided both the Advance Sheets and bound volumes of the North Carolina Court of Appeals and the Supreme Court of North Carolina. Through an LEAA grant, Superior Court Judges were on one occasion offered a set of Strong's North Carolina

have been preferred and at which the presence of the indigent is required;

(3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;

(4) A preliminary hearing;

(5) Trial and sentencing; and

(6) Review of any judgment or decree pursuant to G.S. 7A-27, G.S. 7A-30(1), G.S. 7A-30(2), and G.S. 15-222.

Index, the North Carolina Statutes, Stansbury on Evidence and the Advance Sheets for the Lawyers' Edition of the United States Supreme Court Reports. Through another LEAA grant, Chief District Court Judges were offered a set of the North Carolina Statutes, a set of Strong's North Carolina Index, and Stansbury on Evidence. Through yet another LEAA grant, this one in the amount of $100,000.00 requiring 25% matching county funds, the 100 counties of this State could establish a minimum law library in a county criminal courtroom. This library would consist of a set of the North Carolina Statutes, a set of Strong's North Carolina Index, Stansbury on Evidence, the Reports of the North Carolina Court of Appeals and the Supreme Court of North Carolina, volumes 200 to date.[3] Seventy counties in the State of North Carolina elected to participate in the program. Of the 70, 64 ordered the North Carolina Reports, 66 the North Carolina Statutes, 69 Strong's North Carolina Index, and 70 Stansbury on Evidence. Merely to provide these items to the counties desiring to participate in the program cost $125,000.

In addition to legal resources provided at the expense of the State of North Carolina pursuant to N.C.G.S. 7A-450, legal assistance is also made available to inmates through the various legal aid societies of the State of North Carolina, the North Carolina Civil Liberties Union, the Prison Research Counsel, Law School Habeas Corpus and Constitutional Law Seminars, various voluntary associations of attorneys and law students, all in addition to counsel appointed by the United States District Courts of the State of North Carolina and the Fourth Circuit Court of Appeals to represent pro se petitioners.

The State of North Carolina has established a complete procedure for collateral review of convictions, N.C.G.S. 15-217, et seq., the *POST CONVICTION HEARING ACT*, which provides for the appointment of counsel, N.C.G.S. 15-219. See, also, N.C.G.S. 7A-451 (a) (3). (See Footnote 2, supra.) The

3. Volume 200 is the Fall of 1930.

appointment of counsel continues through the filing of a Petition for Writ of Certiorari in the North Carolina Court of Appeals to review the judgment of the post conviction court. N.C.G.S. 15-222. See, also, N.C.G.S. 7A-451 (b) (6).

CONCLUSION

The concept of "free access" to the Courts does not justify the establishment of extensive legal research facilities making available to untrained individuals with neither an understanding nor respect for the law, resources not readily available to the greater percentage of attorneys practicing in the State of North Carolina. Furthermore, the State of North Carolina has not yet found itself financially able to provide such extensive legal research facilities to either the Superior or District Court Judges or District Attorneys of this State. And, in the current economy, the cost of installation and maintenance of such facilities, unavailable to the majority of attorneys and members of the judiciary in the State of North Carolina except if they travel to use the libraries of the various Schools of Law or the Library of the Supreme Court of North Carolina, would of necessity result in a diversion of resources so critically needed by the Division of Prisons. "Some states . . . may conceivably find that other claims for public funds within or without the criminal justice system preclude the implementation of such a policy at the present time. . . ." ROSS v. MOFFITT, supra, at 618.

Finally, in light of the Respondents' histories in the Courts, and North Carolina's generous funding of G.S. 7A-450, ENTITLEMENT OF INDIGENT PERSONS GENERALLY, which for the current year is $5,596,769.00, it is appropriate to consider Judge Campbell's admonition that some courts have raced ". . . headlong into the breech in a seemingly frantic effort to prove more royal than the king." CAMPBELL, WILLIAM J., DELAYS IN CRIMINAL CASES, 55 F.R.D. 229, 238 (1972).

For the foregoing reasons, it is respectfully submitted that

this case is of sufficient importance that this Court exercise its jurisdiction and issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit. We believe that the question submitted herein is truly substantial and presents to this Court a far reaching issue of the most vital public importance that must be answered.

Respectfully submitted,

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United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 74-2378

Robert (Bobby) Smith, Ronald D. Carnes, Richard A. Carter, and Bradford Mizell Lilly, on behalf of themselves and all others similarly situated, Appellees,

— versus —

Vernon Lee Bounds, Commissioner, State Department of Correction, and Stanley Blackledge, Warden, Central State Prison, Raleigh, N. C., Appellants.

No. 74-2379

Donald W. Morgan, Franklin D. Strader and John H. Russell, on behalf of themselves and all others similarly situated, Appellants,

— versus —

R. L. Turner, Superintendent of Odom Correctional Institution of the North Carolina Department of Correction, Appellee.

No. 74-2380

John Harrington, Alonzo Watts, Clifton Speight, William Ryder, Ronney McBride, Ray Forbes, Appellants,

— versus —

James Holshouser, Governor State of N. C. V. Lee Bounds, Comm. N. C. Dept. of Corrections, Stanley Blackledge, Warden,

Central Prison, F. R. Moore, Sergeant, Central Prison, Franklin Mahan, Regional Supt., M. S. Lee, Captain Washington County Unit 3560, Creswell, N. C., Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. John D. Larkins, Jr., District Judge.

Argued: May 8, 1975. Decided: Sept. 30, 1975

Before HAYNSWORTH, Chief Judge; ANDERSON, Senior Circuit Judge,* and RUSSELL, Circuit Judge.

Patrick Antrim [third-year law student] and Howard Manning [court-appointed counsel in Nos. 74-2378 and 74-2379] (Barry Nakell [court-appointed counsel in Nos. 74-2378 and 74-2380] on brief) for Appellees in No. 74-2378 and for Appellants in Nos. 74-2379 and 74-2380; Jacob L. Safron, Assistant Attorney General of North Carolina (Rufus L. Edmisten, Attorney General of North Carolina, on brief for Appellants in No. 74-2378 and for Appellees in Nos. 74-2379 and 74-2380.

RUSSELL, CIRCUIT JUDGE:

The appeal in these three consolidated cases arose out of like claims asserted by various inmates of the North Carolina Correctional System to the effect that, by failing to provide them with adequate legal library facilities, the State was denying to them reasonable access to the Courts and equal pro-

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* Second Circuit, Sitting by Designation.

tection of the laws as guaranteed by the First and Fourteenth Amendments. The District Court granted plaintiffs' motion for summary judgment and required the responsible State officials to submit a proposed plan for implementing the State's obligation to provide adequate library facilities for the use of indigent prisoners seeking to file *pro se* habeas or civil rights actions, or an acceptable alternative therefor. The State, obedient to this order, filed a plan for prison legal research facilities. It would seem that at this point the petitioners, among other things, objected to the omission from the plan of any legal defenders' program by way of a supplement to the library facilities proposed under the plan. The Court accordingly ordered counsel for all parties to submit briefs on the issue of whether an independent attorneys' office, supplementary to the library facilities was necessary to satisfy proper constitutional standards. After consideration of the briefs filed, the Court refused to require the State to establish an independent attorneys' office and approved, with modification, the library facility plan as submitted by the State.

Both the State and the petitioners have appealed, the State from the order for summary judgment because it contends it is without any obligation to provide prisoners with legal research facilities or an alternative therefor, and the plaintiffs from the order approving, with modification, the proposed plan, because they urge such plan is inadequate.

We affirm the action of the District Court in granting summary judgment and, with a minor modification, in approving the plan submitted as satisfying the constitutional obligation of the State to furnish either legal research facilities to the inmates of its correctional system or an acceptable alternative therefor, in accordance with the provisions of the order for summary judgment as granted by the District Court.

The North Carolina Department of Correction has custody of approximately 10,000 prisoners. These prisoners are housed in some 80 prison units situated in 67 different counties,

stretching from one end of the State to the other. The population in these units varies from 1086 in Central prison to as little as 13 in the Warrenton Unit and the units stretch from the Currituck Subsidiary unit in the east, to the Haywood County Subsidiary unit in the west, a distance of 475 miles. Fifteen of the units house less than a hundred prisoners, fifty from 100 to 200 prisoners, and 10 house over 200 prisoners. The reason for this diffusion of facilities and wide distribution of the prison population is the desire to facilitate work release and other rehabilitative programs and, wherever thought feasible, to keep the prisoners near their families and within home counties, calculated to aid in their subsequent successful re-entry into society. The only unit having a writ room and the semblance of a legal library is the Central Prison in Raleigh. Under the plan approved by the District Court, there would be "approximately seven core libraries located in units throughout the state. Each of these units * * * [would] service a number of designated institutions. In selecting which units * * * [would] be the site of libraries, the Department of Correction * * * [would] consider from which units the most petitions are most likely to originate, and further it * * * [would] consider geographic access." The site selections, however, were subject to the approval of the Court. The plan, also, had various provisions whereby the facilities would be made available to the prisoners.[1] The plan, also, contemplated

1. The plan further provided:
"In each unit forms will be provided for the inmates to request permission to use the library. When an inmate makes a request to use the library, the request will be forwarded to the library in the immediate area. A date will be set for that inmate to use the library. The inmate will indicate approximately how much time will be required to research his particular problem. In most cases a full day's use of the library will be allotted. Therefore, the inmate will be taken, if necessary, to that unit on the night before, housed there overnight, permitted to use the library all day, and then be taken to his home unit on the following day. It is also possible that the inmate can be taken to the institution housing the library on the morning of the day he proposes to use it and then return to his home unit on the evening. This is a logistical problem that will have to be worked out when the libraries are in actual operation. In any event, housing will be made available for inmates desiring to use the library in those cases in which an overnight stay is required.

(Continued on next page.)

a library consisting of certain specified legal reports, statutes or treatises.[2]

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1 (Continued)

"The library will consist of the books in the list appended hereto. In the case of prisoners on indefinite non-punitive segregation in Central Prison and for Correctional Center for Women, we recommend establishing smaller core libraries containing basically N. C. General Statutes and treatises. Women inmates and those on INS may request volumes from the library which will probably be located in Central Prison. An area will be set aside at Women's Prison and in the INS cell block area for working with research material.

"The library will be housed in a room large enough to contain adequately all volumes on hand plus those that will be added by normal expansion. It will be well lighted and suitable for research purposes. Writing material, pen and paper will be provided. It is anticipated that each library will make use of one or two inmates as typists to prepare court petitions and who shall also supervise the day to day use of the library. In order to preserve materials in the library, inmates will be searched upon entering and upon leaving the library. Those inmates who work in the libraries will be assigned library duties on a permanent basis. They will be trained to the best extent possible in researching legal questions and assisting inmates in their research. They will also be permitted to help illiterate and semi-illiterate inmates. It will be recommended to the Corrections Commission that it be specifically made a violation of Department regulations for an inmate to hold himself out as a lawyer, or to accept fees or any payment of any sort for assisting other inmates in their research.

"Such restrictions as are placed on the inmates shall be in accordance with the limitations set forth in Johnson vs. Avery. The library will be subject to the overall supervision of Department personnel. A prison librarian will be in charge of dispersing legal materials to the various libraries.

"Inmates who are under a deadline, e.g. those filing appeals, shall be granted priority over other inmates in the use of the library and the Department will see that those inmates are given access to library within the required time as long as the Department is notified in adequate time to allow the inmate to use the library. For other inmates there may be a waiting period of up to three or four weeks.

"Inmate will have access to a Xerox machine for copying opinions, statutes, etc. This will be on a cost basis to those inmates who are able to pay. Those who are not will be permitted to use the library free. In the regard to the posting of inmate petitions to the courts, postage will be paid by the inmates themselves if they are able to do so; if not, by the Department of Correction. In addition to the legal form books which are recommended, the sample forms will be made available in the libraries plus those forms authorized for use in the appropriate Federal Judicial Districts.

"It is anticipated that approximately ten inmates shall be able to use a library on any given day. Furthermore, inmates simply desiring forms on which to petition the courts may write to the library nearest them and request the forms to be sent. As departmental personnel and inmate assistants gain expertise in this area, it is anticipated that increasingly better legal services will be available to the inmate. By this proposed plan, with optimum use of the library some 350 inmates each week could be making use of research materials in the libraries. In addition to this figure, many inmates will be assisted by having access to forms when they do not actually need the research facilities."

The argument of the State that it was not obligated to submit such a plan and that the grant of summary judgment to require such submission is without merit. Barring the development of an acceptable alternative, the State was bound to make available on some reasonable basis to the inmates of its penal institutions adequate legal research facilities. The District Court extended to the State an opportunity to present an acceptable alternative. The State did not offer such alternative. Under those circumstances, its duty was plain: The State was obligated to provide the inmates with adequate legal research facilities. Its admitted failure to do so warranted the grant by the District Court of summary judgment.

Petitioners, on the other hand, argue that the plan, as approved, as satisfying the requirements of the order for sum-

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2. LIBRARY MATERIALS

"*North Carolina General Statutes*
North Carolina Reports (1960-)
N. C. Court of Appeals Reports
Strongs N. C. Index
North Carolina Rules of Court (West)
U. S. Code Annotated (West)
Title 18
Title 28 § 2241-2254
Title 28 — Rules of Appellate Procedure
Title 28 — Rules of Civil Procedure
Title 42 — §§ 1891-2010
Supreme Court Reporter (West) (1960-)
Federal Reporter 2d (West) (1960-)
Federal Supplement (West) (1960-)
Black's *Law Dictionary* (West)
Sokol *Federal Habeas Corpus* (Michie)
Lafave and Scott *Criminal Law Hornbook* (West) (2 copies)
Cohen *Legal Research*
Criminal Law Reporter (Bureau of National Affairs)
Palmer *Constitutional Rights of Prisoners* (Criminal Justice Text Series)

Core

North Carolina General Statute
Black's *Law Dictionary* (West)
Sokol *Federal Habeas Corpus* (Michie)
Lafave and Scott *Criminal Law Hornbook* (West) (2 copies)
Cohen *Legal Research*
Criminal Law Reporter (Bureau of National Affairs)
Palmer *Constitutional Rights of Prisoners* (Criminal Justice Text Series)

MODIFICATIONS BY COURT

1. that two copies of Title 28 U.S.C.A. § 2254 and Title 42 U.S.C.A. §§ 1891-199[illegible] be required for each core library;
2. that no reporter advance sheets or volumes be discarded, in effect giving each library two volumes of each current reporter, * * *.

mary judgment, is deficient in that it fails to include provision for an independent attorneys' office to supplement the library facilities made available to the inmates and that the library facilities themselves are not extensive enough. The District Court, while finding that the addition of an independent attorneys' office would be helpful, held that the State was not obligated to provide such additional assistance. In cases which have arisen since the pioneer authority, *Gilmore v. Lynch* (N.D. Cal. 1970) 319 F. Supp. 105, *aff. sub nom. Younger v. Gilmore* (1971) 404 U. S. 15, it has been generally assumed that adequate legal research facilities and an acceptable legal assistance program are to be thought of as alternatives and not as supplements to each other in the discharge of the State's obligation in this area. *See Kirby v. Ciccone* (8th Cir. 1974) 491 F. 2d 1310, 1312; *Noorlander v. Ciccone* (8th Cir. 1973) 489 F. 2d 642, 650-1; *Johnson v. Anderson* (D. Del. 1974) 370 F. Supp. 1373, 1385; *cf. Ross v. Moffitt* (1974) 417 U. S. 600, 616-18. We agree and are of opinion that the District Court correctly ruled that the State is under no constitutional duty to offer the inmates of its penal institutions both adequate legal research facilities and an independent attorneys' office, however helpful the dual service might be.[3]

In view of the great variety in prisoner population in the many diffuse and widely distributed prison installations in the North Carolina prison system, we, also, find that the provisions for the use of the facilities and the adequacy of the facilities themselves, meet constitutional standards save in one particular. The instance in which we are of the opinion the plan is deficient is the differentiation made in the rights of male and women prisoners. Women prisoners are afforded under the plan less accessibility to legal research facilities than male prisoners. The plan states no substantial reason for this

3. Of course, the State would have the right, should it later determine that independent legal counsel for prisoners would be preferable to providing them adequate legal research facilities, to apply to the District Court for permission to adopt a legal counseling service in lieu of the library facilities, as now provided under the order of the District Court.

discrimination nor is one apparent in the record. *See Reed v. Reed* (1971) 404 U. S. 71, 76; *Eslinger v. Thomas* (4th Cir. 1973) 476 F. 2d 225, 230-1. Without such a showing, the discrimination against female prisoners is invalid. The plan must be modified by removal of this discrimination.

As modified, the decree of the District Court herein is affirmed.